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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,731	09/22/2003	Philip C. Backus	7239.3001.001	9681

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EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT PAPER NUMBER

3727

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/667,731

Applicant(s)

BACKUS, PHILIP C.

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-9 is/are rejected.
- 7) ☒ Claim(s) 2-4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/19/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 recites the limitation that the left and right bands have a "height that is at least-third the height of buckets to be carried." Because no particular bucket has been claimed, it is unclear just what height this makes the bands. Because any number of different sized buckets could be held in the carrier, this limitation renders the claims indefinite.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (US 6,032,841).

Johnson discloses a carrier made from rubber sheet material (col. 4 line 5) comprising a central strip (16) with a left and right end; a left front band portion (14) with a left front band upper edge integral with the left end of the central strip, a left front band lower edge, a left front band free end, and a left front band rear portion (14'); a right

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front band portion (12) with a right front band upper edge integral with the right end of the central strip, a right front band lower edge, a right front band free end (13), and a right rear band portion (12') integral with the central strip and the right front band portion; a left joint (24/28) connecting the left front band free end to the left rear band portion to form a carrier band with a frustoconical left receiving passage; and a right joint (22/26) connecting the right band free end to the right rear portion to form a right carrier band with a frustoconical right receiving passage. Regarding the carrier being used to carry a bucket, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Johnson which is capable of being used in the intended manner, i.e., to carry a bucket(s). There is no structure in Johnson that would prohibit such functional intended use (see MPEP 2111). Note that buckets can be of any size. One or more smaller-sized buckets could certainly be carried by Johnson's device.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson.

Regarding claim 5, Johnson discloses the claimed invention except for the upper and lower edges of the left and right side bands having an arcuate shape. It has been well settled that a change in shape or form is not patentable as long as the function of the device being modified is not itself modified. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to make the upper and lower edges of the left and right band portions to have an arcuate shape, or any other shape or contour, as the bands would still function to be wrapped around an object and fastened together, securing the object therein.

Regarding claim 9, the device of Johnson is made from rubber sheet material. In order to obtain the particular shape of the device from a sheet of rubber, one of ordinary skill would find it obvious to cut the particular shape out of the rubber sheet material. Having satisfied the first method step, Johnson then teaches wrapping the left and right front and rear band portions around a conical surface (Figure 2), overlapping the rear and front band portions (Figure 2), and applying an adhesive to the left and right rear and front band portions to form a left and right band with a carrier passage (Figure 2). Examiner is considering the act of applying an adhesive to be the act of applying the hook-type fasteners to the loop-type fasteners between the left and right band portions.

***Allowable Subject Matter***

7. Claims 2-4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 6-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. Examiner sees no reason or teaching in the prior art of record that would motivate one of ordinary skill in the art to include additional tongues or flaps on the structure of Johnson.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Friday, 8am - 4pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JML  
3/16/06



**Stephen K. Cronin**  
Primary Examiner